Previous references.
Ch File No 196 of 1906-7-Sls 1-6. A oct 07

1908-9
(Courts)

File No. Ch 92 of 08

Serial Nos. 3 & 4

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 3 & 4

Part B. for June 1909.

SUBJECT.

Separation of judicial and Executive functions

Table of contents

3 From the A. Resident in Mysore No 2140 of 7-4-1909.
Forwards a copy of certain questions asked in the Imperial Legislative Council on the subject of the separation of judicial and executive functions and of the replies thereto and requests to be furnished with a memorandum showing the exact nature of the changes made in Mysore and their effect on the masses at present and in future

G. R. S. 58 4 To the A. Resident in Mysore No Pol 1091 & 24-6-1909
Forwards a memorandum on the separation of judicial and Executive functions as effected in the Mysore State

G.R.S.11] 1908-09

GENERAL AND REVENUE SECRETARIAT

(Courts)

NOTES.

Cf- File No. 92 08.

FILE HEADING.

Separation of the Judicial and Executive functions

From

The First Assistant to the Resident in Mysore

No. 2140 Dated 7-4-09. Received 8-4-09

Diary No. 9269/4. Enclos. one Spare Copies Serial No. 3

BRIEF ABSTRACT OF LETTER.

Forwards a Copy of certain questions asked in the Imperial Legislative Council ~~to~~ on the subject of the separation of judicial and executive functions and of the replies thereto, and requests to be furnished with a memorandum, showing the exact nature of the Changes made in Mysore and their effect on the masses at present and in future.

NOTES AND ORDERS.

Secretary's orders on the paper under disposal. ". Let me have refees in due course"

Intd K.S.C. 7-4-1909.

Subd with references to Secretary

HCS 10-4-09 SH 12/4

13/4.

Please put up a brief memorandum

Notes—First sheet.

GPB—30,000—3-4-07

Serial No. 4

In Mysore, the bulk of the Criminal Work is carried on- as in British India- by the Revenue Officials. Assistant Commissioners (corresponding to Deputy and Assistant Collectors) generally exercise first class powers while the Amildars (corresponding to Tashildars) located in Taluks exercise 2nd class or 3rd class powers. There are no separate wholetime magistrates except in the capital cities of Bangalore and Mysore where an Assistant Commissioner is located, under the designation of City Magistrate, exclusively for the disposal of criminal work.

5 (2.) Suggestions were being made in the Representative Assembly from time to time about the desirability of bringing about some separation of the Judicial from executive functions and in the year 1906 a member of the Representative Assembly who belonged to the legal profession repeated the proposal and urged that Amildars might be divested of their magisterial powers. The matter was carefully considered by the Durbar and after consulting the Chief Court they decided that as a first

XX

GPB—50,000—13-5-08

step

Serial No.

step, the measure might be tried experimentally in the Taluks of Bangalore, Mysore, Kolar, Hassan, Holenarsipur, Maddagiri and Sagar in which there were either City Magistrates or Munsiffs located at the Head Quarters of the Taluks, and whose file criminal or civil, respectively, were not a heavy one. The Amildars of these Taluks were accordingly relieved of their magisterial duties and these were assigned in Bangalore and Mysore to the respective City Magistrates (who have no executive functions to discharge), and in other Taluks to the Munsiffs at those stations, these being at the same time invested with the powers of magistrates of the second class. The Amildars referred to continued to retain their magisterial powers but were divested of the power to take cognizance of offences under Sec; 190 of the Criminal Procedure Code.

(3.) The effect of the above changes is that in 5 taluks of the State criminal work is discharged by Munsiffs or Civil Judges who are subordinate

GPB—50.000—18-3-08

Serial No.

subordinate departmentally to the District Judge and the Chief Court. But as they are only 2nd Class Magistrates, ~~appeals~~ they are subject to the appellate and revisional jurisdiction of the District Magistrates, who are executive officers-being Deputy Commissioners of Districts

The two City Magistrates are invested with first class powers and appeals from their convictions therefore lies to the Sessions Court in the Mysore and Chief Court in Bangalore.

(4.) This scheme came into operation in November 1907 and was in force for nearly seven months when the report on the administration of criminal justice for the year 1907-08 was submitted by the Chief Court. In that report it was remarked that in some places the arrangement retarded the prompt disposal of civil work but that the experiment would be given a fair trial. In their review on this report Government ~~stated~~ remarked that they would await further experience of the working of the system before deciding on any extension or change. It will be seen

GPB—50,000—13-5-08

Serial No.

seen that the Chief Court have said nothing against the system of separation by itself. On the contrary the Dewan in his address to the Representative Assembly in 1908 observed that the system has worked satisfactorily as far as it has gone and that further extension of the scheme had to be put off only on account of financial considerations. The Dewan did not make the general observation embodied in the 2nd question of the Hon'ble Sir Khwaja Salimulla, Nawab of Decca.

(5.) The Durbar have reason to think that the scheme has been received favourably by the educated classes in the State and even as regards the masses there is no reason to think that the reform is unacceptable to them. Munsiffs and City Magistrates are stationary officers, while Amildars are required to itenerate in their Taluks for at least ten days in the month. Their duties are also of a multifarious character and do not allow the same amount of leisure for criminal work which stationary officials can command. It must therefore

Serial No.

fore be a great convenience to parties and wit-
nesses in petty criminal cases to have judges that
can dispose of criminal work promptly and expe-
ditiously.

6/5

Secretary).

Q The above memorandum may be sent to the Govt in reply to the enquiry made.

Dealt thro' 2nd W

6.8.08

10 The experiment has been tried on the lowest possible scale in this State and for a very short period, and I do not think that any general conclusions can be safely or usefully drawn about its effects at present. At any rate, the general soundness of the case for the separation cannot be questioned as is done by insinuation in the questions put in the Viceregal Council on the strength of our experience. I would substitute the following for para 4: 15 of the memo. by the Office.

Serial No. 11 / 11

The exact meaning of the question of the Hon'ble Member marked C is not clear. The work done by the criminal courts has little effect on the general well-being of the masses, especially when its operation has extended only over about a short period of one or two years. The result can be judged at present only by a priori considerations. The chief objections to investing the executive officers with judicial functions as observed in this State, are that the latter being obliged to be often absent from head quarters, the parties and witnesses are put to inconveniences caused either by delay or by having to go to different places; that judicial work being only one of the many departments entrusted to these officers, they cannot manage to devote enough time and attention to it & so it is often done indifferently done; that as these officers are not in general sufficiently trained in methods of legal procedure, the course of

NOTE—Contn. sheet.

GPB—50.000—13-5-08

Serial No.

somewhat
justice is uncertain; and that
it may occasionally happen that
the judicial independence of these
officers is ~~sometimes~~ affected by the
bias imbibed from their work in
executive matters. All these draw-
backs are removed ~~great~~ more
or less by entrusting the work
of dispensing criminal justice to officers
specially trained & set apart ~~from~~
for it; and the result must, of necessity
be of benefit both to the 'masses' and
the 'classes' that have occasion
to resort to the criminal Courts
~~or~~ or are brought before them.
The experience of the Durban so far
has not belied this expectation.

Hy
8/5/9

723/1975/09 Dewan.

12 Please put up a draft with
Reference to the 2 Notifications
mentioned in 12 Ingoss

8/5/09
GH
8/5

13 Submitted with a typed draft as directed

HE
13/5/09

NOTE—Contn. sheet.

GPB—50,000—13-5 08

9

Submitted to His Highness.

14 I submit herewith a letter dated 7th April 1909 from the First Assistant Resident, forwarding a copy of certain questions asked by the Hon'ble the Nawab of Dacca at a meeting of the Imperial Legislative Council held on the 26th February 1909 on the subject of the separation of judicial and executive functions in Mysore, and requesting to be furnished with a Memorandum showing the exact nature of the changes that have been made in Mysore in this respect, and the effect of these changes.

15 2. I submit also a draft of the Memorandum to be furnished to the Residency as approved by the Second Councillor, with a few additions and modifications proposed by me.

26 February 09

10.

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

137
29.5.09

Memorandum regarding the nature and effect of the changes relating to the separation of Judicial and Executive functions in Mysore.

1003.

Order.

16 Approved
KRW
16/6/09
18

Seey
Ltr
20 June 09
19 Put up draft to Govt forwarding the memorandum

21/6/09

17 Secretary
21/6/09

21/6/09

21/6/09

G. R. S. 12]
General and Revenue Secretariat.

Ct File No. 92 of 1908-09 — 119

Serial No.	
19	Submitted with a draft letter forwarding the above memorandum to the Residency — Secy SR 21-6-09 W/P — 22/6/09 SR — Secretary. No Issue SR 22/6/09 SR 22/6
4	To the F.A. Resident. L.M. 1091 dt 24-6-09 — Forwards a memorandum on the separation of judicial and executive functions as effected in the Mysore State.

Note—Contn. sheet.

GPB—50,000—13-5-08

No. 2140 / E—1 / J 2592

FROM

T. B. COPELAND, Esq., I. C. S.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Dewan of Mysore.

Dated Bangalore, 7th April 1909.

SIR,

I am directed to forward herewith a copy of certain questions asked by the Hon'ble the Nawab of Dacca at a meeting of the Imperial Legislative Council held on the 26th February 1909 on the subject of the separation of judicial and executive functions and of the replies given to the questions.

2. I am to request that the Resident may be kindly ~~forwarded~~ favoured at an early date with a memorandum showing the exact nature of the Changes that have been made in the Mysore State in this respect, the effect of such changes, and whether, in the opinion of the Durbar, any appreciable benefit has arisen, or is likely to arise, to the masses from this separation.

I have the honour to be,

Sir,

Your most obedient servant,

T. Copeland

First Assistant Resident.

Extract from the proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., C. 67, and 55 & 56 Vict., c. 14).

The Council met at Government House, Calcutta, on Friday, the 26th February 1909.

QUESTIONS AND ANSWERS.

The Hon'ble Sir Khwaja Salimulla asked:-

"Is it a fact that the experiment of the separation of the two functions, commenced and brought into operation by the Government of Mysore since October 1907, has not given satisfaction and has not proved a success?

"That the Dewan has, in the Mysore Representative Assembly declared that the Government was not prepared to further extend the experiment?

"That the Judges of the Chief Court of Mysore have declared that the experiment of the separation of the two functions has retarded the prompt disposal of Civil Court work?"

The Hon'ble Sir Harvey Adamson replied:-

"In 1907 the Amildars of Kolar, Hassan, Maddagiri, Hosa-Narsipur and Sagar in the Mysore State were relieved of their magisterial functions and the Munsiffs at those stations were invested with the powers of Magistrates of the second class. The Amildars of Bangalore and Mysore were also instructed not to exercise their magisterial powers, and their magisterial duties were assigned to the respective City Magistrates.

"In October 1908 the Dewan of Mysore, in addressing the Mysore Representative Assembly, remarked:--'The experiment has worked well so far as it has gone, but any further extension of its scope appears likely to entail additional expenditure and has on that account to be

be deferred for the present.' The Government of India have no further information regarding the working of the experiment and have no record of any pronouncement on the subject by the Chief Court of Mysore."

(c) Will Government be pleased to direct the Political Agents of Mysore, Barcda and such other Native States where the experiment has been brought into force, ~~to report whether the experiment has been brought into force~~, to report whether any appreciable benefit has arisen, or is likely to arise, to the masses from this separation.

(c) The Government will ask for reports upon the exact nature of the changes that have been made and upon their effect including the points mentioned by the Hon'ble Member."

" C O P Y ."

Registrar,

Mysore Resident's Office.

at

4

G.R.S. 26]

Gs - File No. 92/08

Serial No. 2

Diary No. of letter replied to 2592

Fol: No. 1091
Secl.

General and Revenue Secretariat
( )
, *the* 190 .

To The First Assistant to the Resident in Mysore -

Date of issue 24-6-1908.

Signed by
Mr. C.S. Balasundaramiyer

Sir,

As requested in your letter N° 2140 dated the 7th April 1909, I am directed to forward herewith, a memorandum ~~Regarding~~ On the Separation of judicial and executive functions, as effected in the Mysore State.

I have &c.,

For Secretary

SW
24/6/08

over.

SUBJECT.

GF
Hcg SW 22/6/08
21.6.09 SW

Ad/23/6

In Mysore, the bulk of the Criminal work is carried on ~~as in British India~~ by the Revenue Officers. Assistant Commissioners (corresponding to Deputy and Assistant Collectors) generally exercise first class powers, while the Amildars (corresponding to Tashildars) located in Taluks exercise 2nd class or 3rd class powers. There are no separate whole-time magistrates except in the capital cities of Bangalore and Mysore, where an Assistant Commissioner is located, under the designation of City Magistrate, exclusively for the disposal of criminal work.

2. Suggestions were being made in the Representative Assembly from time to time about the desirability of bringing about some separation of Judicial from Revenue executive functions, and in the year 1906, a member of the Representative Assembly who belonged to the legal profession repeated the proposal and urged that Amildars might be divested of their magisterial powers. The matter was

carefully considered by the Darbar, and, after consulting the Chief Court, they decided that as a first step, the measure might be tried experimentally in the Taluks of Bangalore, Mysore, Kolar, Hassan, Holenarasipur, Maddagiri and Sagar in which there were either City Magistrates or Munsiffs located at the Head Quarters of the Taluks, and whose files, criminal or civil, respectively, were not too heavy. The Amildars of these Taluks were accordingly relieved of their magisterial duties, and these were assigned in Bangalore and Mysore to the respective City Magistrates (who have no Revenue executive functions to discharge), and in other Taluks to the Munsiffs at those stations, ~~these being at the same time~~ at the same time invested with the powers of magistrates of the second class. The Amildars referred to continued to retain their magisterial powers, but were divested of the power to take cognizance of offences under Section 190 of the Criminal Procedure Code.

3. The effect of the above changes is that in 5 taluks of the State criminal work

7

is performed by Munsiffs or Civil Judges who are subordinate departmentally to the District Judge and the Chief Court. But as they are only 2nd class Magistrates, they are still subject to the appellate and revisional jurisdiction of the District Magistrates, who are executive officers, being Deputy Commissioners of Districts.

4 The two City Magistrates are invested with first class powers, and therefore appeals from their convictions therefore lie to the Sessions Court in Mysore and the Chief Court in Bangalore.

5 This scheme came into operation in November 1907, and was in force for nearly seven months when the report on the administration of criminal justice for the year 1907-08 was submitted by the Chief Court. In that report it was remarked that in some places the arrangement retarded the prompt disposal of civil work by the Munsiffs, but that the experiment would be given a fair trial. In their review on this report, Government remarked that they would await further

6. It may here be added that the only inconvenience which has been complained of in these arrangements is that in petty nuisance cases arising out of the Village Limit about nine miles, parties & witnesses have to go long distances to the Magistrates stationed at headquarters instead of its being possible for an itinerant Officer like the Amildar disposing of such cases on the spot -

experience of the working of the system before deciding on any extension or change. It will be seen that the Chief Court have said nothing against the system of separation by itself. On the other hand the late Dewan Sir V.P. Madhavarao in his address to the Representative Assembly in 1908 observed that the system has worked satisfactorily as far as it has gone and that further extension of the scheme had to be put off only on account of financial considerations. The Dewan did not make the general observation embodied in the second question of the Hon'ble Sir Khwaja Salimulla, Nawab of Decca, to the effect that the Government was not prepared to further extend the experiment.

7. The exact meaning of the question of the Hon'ble Member marked C is not clear. The work done by these separate Criminal Courts has had little effect on the general well-being of the masses, especially when its operation has been extended only over a short period of one or two years. The result can at present be judged only by and it is difficult to judge of the result of the Experiment a priori considerations.

Revenue

The chief objections to investing the executive officers with judicial functions as observed in this State, are that the latter being obliged to be often absent from headquarters, the parties and witnesses are put to inconveniences caused either by delay or by having to go to different places; that judicial work being only one of the many departments entrusted to these officers, they cannot manage to devote enough time and attention to it, and so it is often indifferently done; that as these officers are not in general sufficiently trained in methods of legal procedure, the course of justice is somewhat uncertain; and that it may occasionally happen that the judicial independence of these officers is affected by the bias imbibed from their work in executive matters. All these drawbacks are removed more or less by entrusting the work of dispensing criminal justice to officers specially trained and set apart for it; and the result must of necessity be of benefit both to the "masses" and the "classes" that

10

have occasion to resort to the Criminal Courts or are brought before them. The experience of the Durbar so far has not belied this expectation. But, as has already been observed, the experiment has been on a very limited scale which does not allow of expansion without heavy expenditure, almost prohibitive because it is incommensurate with the resultant benefit was much as under the present system, with uprightness in the magistracy and vigilance & accessibility on the part of appellate authorities, there is on the whole prompt and substantial justice meted out -

14 May 09